

COMMISSIONERS APPROVAL

GRANDSTAFF *Cg*

ROKOSCH *JHR*

THOMPSON *AT*

CHILCOTT *gc*

DRISCOLL *KD*

PLETTENBERG (Clerk & Recorder)

Members Present..... Commissioner Carlotta Grandstaff,
Commissioner Jim Rokosch, Commissioner Alan Thompson, Commissioner Greg
Chilcott and Commissioner Kathleen Driscoll

Date.....October 2, 2008

Minutes: Beth Perkins

► The Board met for a public hearing regarding Pappas Minor subdivision plus one variance. Present were Planner Randy Fifrick, Planner Tristan Riddell, Representative John Horat, Owners, Mr. & Mrs. Kirkland, Mr. Pappas and several citizens. Commissioner Grandstaff was not present at this meeting due to another matter.

Commissioner Rokosch opened the hearing and requested any conflicts of interest be disclosed. Commissioner Thompson stated he knows the family for over 30 years and they had contributed to his campaign. On the advice of legal counsel, there is no evidence of a conflict of interest. Commissioner Rokosch then requested the Planning Staff report be read.

Randy presented the staff report as follows:

**PAPPAS SUBDIVISION
THREE-LOT MINOR SUBDIVISION**

STAFF REPORT FOR BOARD OF COUNTY COMMISSIONERS

CASE PLANNER: Randy Fifrick

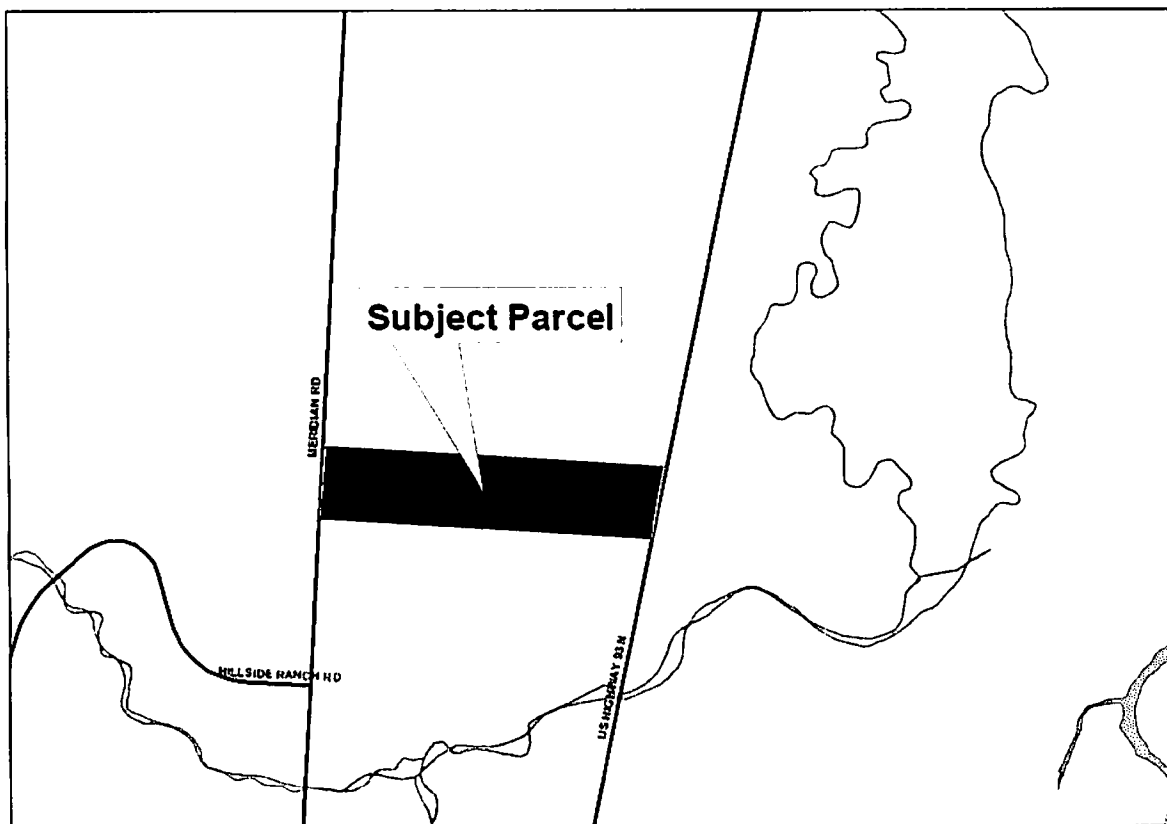
**REVIEWED/
APPROVED BY:** Tristan Riddell

PUBLIC MEETINGS: BCC Public Hearing: 9:00 a.m. October 2, 2008
Deadline for BCC action (60 working days): October 24, 2008

SUBDIVIDER: Quinn Kirkland
685 Alvista Loop
Hamilton, MT 59840

REPRESENTATIVE: Bitterroot Engineer & Design
1180 US Highway 93
Corvallis, MT 59828

LOCATION OF REQUEST: The property is located south of Victor off US Highway 93. (See Map 1)



Map 1: Location Map
(Source Data: Ravalli County GIS Department)

**LEGAL DESCRIPTION
OF PROPERTY:**

Lot 3, CS # 2659; NW 1/4 of Section 19, T7N, R20W,
P.M.M., Ravalli County, Montana.

**APPLICATION
INFORMATION:**

The subdivision application was determined sufficient on September 4, 2008. Agencies were notified of the subdivision on July 22, 2008 and September 17, 2008. Comments received from agencies are Exhibits A-1 through A-7 of the staff report. This subdivision is being reviewed under the Ravalli County Subdivision Regulations (RCSR) amended May 24, 2007.

LEGAL NOTIFICATION: Notice of the project was posted on the property and adjacent property owners were notified by mail dated September 17, 2008. No public comment has been received to date.

**DEVELOPMENT
PATTERN:**

Subject property:	Residential
North:	Commercial
South:	Residential
East:	Agricultural
West:	Residential

INTRODUCTION

The subject property is located south of Victor off US Highway 93 and Meridian Road. The proposal includes 1 residential lot, which already exists, and two new commercial lots. The applicant is requesting a variance from Section 5-2-2 (c) of the Ravalli County Subdivision Regulations, which requires when a subdivision with more than two lots fronts on a public road classified as minor collector or higher (Meridian Road and U.S. Highway 93), all lots within the subdivision shall access off of a road internal to the subdivision. Instead, the applicant has proposed accessing the two commercial lots off of a common access from US Highway 93 and the residential lot from an existing access off Meridian Road.

Staff recommends conditional approval of the subdivision proposal.

**RAVALLI COUNTY BOARD OF COUNTY COMMISSIONERS
OCTOBER 2, 2008**

**PAPPAS
THREE-LOT MINOR SUBDIVISION**

RECOMMENDED MOTIONS

That the variance request from Section 5-2-2(c) of the Ravalli County Subdivision Regulations, which requires when a subdivision with more than two lots fronts on a public road classified as a minor collector or higher (Meridian Road and U.S. Highway 93), all lots within the subdivision shall access off of a road internal to the subdivision, be **approved**, based on the findings of fact and conclusions of law in the staff report.

That the Pappas Subdivision be **approved**, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.

**RECOMMENDED MITIGATING CONDITIONS OF APPROVAL FOR THE
SUBDIVISION**

1. A document entitled "Notifications to Future Property Owners" that includes the following notifications and the attachments listed below shall be included in the submittal of the final plat to the Planning Department and filed with the final plat:

Notification of Proximity to Agricultural Operations. This subdivision is located near existing agricultural activities. Some may find activities associated with normal agricultural activities objectionable and dangerous. (Section 3-2-8(b)(v), *Effects on Agriculture*)

Notification of Limitation of Access onto Road. A "no-ingress/egress" restriction exists along the eastern boundary of Lot 2 and Lot 3 to prevent access onto US Highway 93. Lot 2 must use the common access located on Lot 3 and utilize the internal driveway easement to access their lot. Lot 3 must use the common access to access their lot. This limitation of access may be lifted or amended only with the approval of the Board of County Commissioners. (Section 3-2-8(b)(v), *Effects on Local Services and Public Health & Safety*)

Notification of Water Rights. Lot 1 within this subdivision does have the right to take irrigation water out of the infrastructure located within the subdivision. Lot 2 and Lot 3 within this subdivision do not currently have the right to take irrigation water out of the infrastructure located within the subdivision. Taking water without a water right for irrigation purposes is illegal. (Section 3-2-8(b)(v), *Effects on Agricultural Water User Facilities*)

Notification of Irrigation Facilities and Easement. Within this subdivision there are irrigation easements, as shown on the final plat. All downstream

water-right holders have the right to maintain and repair their irrigation facilities whenever necessary to keep them in good condition. The filed subdivision plat shows the irrigation easements on the property. The downstream water rights holders must approve any relocation or alteration (e.g. installation of a culvert) of irrigation ditches/pipelines. Any act that damages or destroys a ditch, interferes with its operation or maintenance in any way, or restricts access to the ditch so as to interfere with its maintenance is expressly prohibited. The downstream water right holders have the right to use the easements to maintain the ditches. (*Section 3-2-8(b)(v), Effects on Agricultural Water User Facilities*)

Notification of "very limited" Soils. Within this subdivision there are areas of the property identified as potentially having soils rated as very limited for roads and building sites. The approximate locations of these areas can be found on a reduced copy of the final plat and descriptions of the very limited soils are included as exhibits to this document. (The applicant shall include the exhibits as attachments) (*Section 3-2-8(b)(v), Effects on Public Health and Safety*)

Notification of Common Access Maintenance Agreement. The common access located off of US Highway 93, is not maintained by Ravalli County, the State of Montana, or any other governmental entity. Neither the County nor the State assumes any liability for lacking or improper maintenance. A Common Access Maintenance Agreement for this common access was filed with this subdivision and outlines which parties are responsible for maintenance and under what conditions. (*Section 3-2-8(b)(v), Effects on Local Services*)

Notification of No-Build/Alteration Zone. Within this development there is a no-build/alteration zone, as shown on the final plan. No new structure may be constructed in this area. No new utilities may be constructed in this area. Roads, trails, and utility crossings through this area are not permitted. Activities directly associated with the maintenance of the irrigation ditches, such as noxious weed control and clearing vegetation within the ditches, are allowed. (*Section 3-2-8(b)(v)(B), RCSR, Effects on Natural Environment and Wildlife & Wildlife Habitat*)

2. Protective covenants for this subdivision shall be submitted with the final plat that include the following provisions:

Living with Wildlife. Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the presence of wildlife such as white-tailed deer, black bear, mountain lion, coyote, fox, skunk, raccoon, and magpie. Please contact the Montana Fish, Wildlife & Parks office in Missoula (3201 Spurgin

Road, Missoula, MT 59804) for brochures that can help homeowners “live with wildlife.” Alternatively, see FWP’s web site at www.fwp.mt.gov. (Section 3-2-8(b)(v), *Effects on Agriculture, Effects on Natural Environment, & Wildlife and Wildlife Habitat*)

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

- a. Homeowners must be aware of the potential for **vegetation damage by wildlife**, particularly from deer feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Also, consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- b. **Gardens, fruit trees** or orchards can attract wildlife such as bear and deer. Keep produce and fruit picked and off the ground, because ripe or rotting fruit or organic material can attract bears, skunks and other wildlife. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. The top rail should be made of something other than wire to prevent wildlife from entanglement. Netting over gardens can help deter birds from eating berries. To keep wildlife such as bears out of gardens and/or away from fruit trees, use properly constructed electric fences and maintain these constantly. (Contact FWP for information on “all-species electric fencing” designed to exclude wildlife from gardens and/or home areas.)
- c. **Garbage** must be stored in secure animal-resistant containers or indoors to avoid attracting animals such as raccoon, black bear, and other wildlife. If stored indoors, it is best not to set garbage cans out until the morning of garbage pickup; bring cans back indoors by the end of the day.
- d. **Do not feed wildlife** or offer supplements (including salt blocks), attractants, or bait for deer, sheep or other wildlife, including during the winter. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (MCA 87-3-130) to purposely or knowingly attract bears with supplemental food attractants (any food, garbage, or other attractant for game animals) or to provide supplemental feed attractants in a manner that results in “an artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety.” Also, homeowners must be aware that deer can attract mountain lions to the area.

- e. Bears can be attracted to food smells associated with **outdoor food storage**; therefore, freezers and refrigerators should not be placed outdoors on porches or in open garages or buildings. If a freezer/refrigerator must be located outdoors, attempt to secure it against potential bear entry by using a stout chain and padlock around the girth of the freezer.
- f. **Birdseed** in bird feeders attracts bears. If used, bird feeders must: 1) be suspended a minimum of 20 feet above ground level, 2) be at least 4 feet from any support poles or points, and 3) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.
- g. **Pets** must be confined to the house, in a fenced yard, or in an outdoor kennel area when not under the direct control of the owner, and not be allowed to roam as they can chase and kill big game and small birds and mammals. Keeping pets confined also helps protect them from predatory wildlife. Under current state law it is illegal for dogs to chase hoofed game animals and the owner may also be held guilty (MCA 87-3-124).
- h. **Pet food and livestock feed** must be stored indoors, in closed sheds or in bear-resistant containers in order to avoid attracting wildlife such as bears, mountain lion, skunk, and raccoon. **When feeding pets and livestock**, do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.
- i. **Barbecue grills** should be stored indoors. Permanent outdoor barbecues grills are not allowed in this subdivision. Keep all portions of the barbecues clean. Food spills and smells on and near the grill can attract bears and other wildlife. (Due to the potential hazard of fire and explosion, propane cylinders for gas-fueled grills should be disconnected and kept outdoors. Under no circumstances should propane cylinders be stored indoors.)
- j. Consider **boundary fencing** that is no higher than 3-1/2 feet (at the top rail) and no lower than 18 inches (at the bottom rail) in order to facilitate wildlife movement. Barbed wire fences are not allowed in this subdivision, and this should avoid animals such as deer and/or elk becoming entangled in the wire or injuring themselves when trying to jump the fence.
- k. **Compost piles** can attract skunks and bears. If used they should be kept in wildlife-resistant containers or structures. Compost piles should be limited to grass, leaves, and garden clippings, and piles should be turned regularly. Adding lime can reduce smells and help decomposition. Do not add food scraps. (Due to the potential fire hazard associated with decomposition of organic materials, compost piles should be kept at least 10 feet from structures.)

- l. **Apiaries (bee hives)** could attract bears in this area and should be avoided. (If used, consult Montana Fish, Wildlife & Parks or the U.S. Fish & Wildlife Service for help in planning and constructing an apiary system that will help deter bears.)
- m. Residents of this subdivision must recognize that the subdivision is located within one-half of mile from the Bitterroot River and its associated sloughs and wetlands, where lawful waterfowl hunting and the associated **discharge of shotguns** could occur from a half-hour before sunrise through sunset, and the season can run from September into January.
- n. These wildlife covenants cannot be changed or eliminated without the concurrence of the governing body (Ravalli County Commissioners).

Riparian Use Guidelines. There is a natural drainage that runs west to east through the northern portion of Lot 2. On each side of this drainage is a variable-width riparian area, which is collectively depicted as a "no-build/alteration buffer zone" on the plat. The 10-foot wide irrigation easement shall not be included in the no-build/alteration zone. Within these buffer zones, encouraging the development of site-appropriate native vegetation (including shrubs and trees)--while *discouraging* actions such as grading, planting and irrigating lawns, mowing or cutting or clearing vegetation, and livestock grazing--would help preserve the functionality of this natural drainage, protect and improve wetland vegetation, enhance slope stability, and protect property from eroding banks and possible flooding.

The following covenants, designed to guide use of these buffer zones, shall apply:

- a. No new building or alteration is allowed in the zones.
- b. Only non-motorized access and use of the buffer zones is allowed (except for certain maintenance needs such as weed spraying).
- c. Do not cut or remove live or dead vegetation, particularly shrubs and trees from the buffer zone. Wood (i.e., fallen branches, downed trees) is an important part of habitat and contributes significantly to overall slope stability, and dead trees function as important wildlife nesting habitat. Exception: proper use of chemicals or other methods of control (other than mowing) for noxious weeds is allowed, and planting appropriate native riparian vegetation (trees, shrubs) is allowed.
- d. Do not plant lawns or crops in the buffer zone. Leave or plant native vegetation as ground cover as this avoids the use of fertilizers that contribute to water quality problems.

- e. If planting is planned for this area, the goal should be to re-establish native plant species appropriate to the site.
- f. In general, keep livestock out of the natural drainage, and do not include the drainage in corrals. Use fences to keep livestock from trampling and grazing riparian vegetation in the buffer zone.
- g. In summary, allow riparian areas--the drainage channel and buffer zones--to remain undisturbed. Do not modify them unless such change would help return the area to a natural state.
- h. These riparian covenants cannot be altered or eliminated without consent of the governing body (Ravalli County Commissioners).

Waiver of Protest to Creation of RSID/SID. Owners and their successors-in-interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to, a community water system, a community wastewater treatment system, and improving and/or maintaining the roads that access the subdivision, including related right-of-way, drainage structures, and traffic control signs. (Section 3-2-8(b)(v), *Effects on Local Services*)

Lighting for New Construction. To promote public health and safety, reduce energy consumption, and reduce impacts to nocturnal wildlife, full cut-off lighting is recommended for any new construction within this subdivision. A full cut-off fixture means a fixture, as installed, that is designed or shielded in such a manner that all light rays emitted by the fixture, either directly from the lamps or indirectly from the fixture, are projected below a horizontal plane through the lowest point on the fixture where light is emitted. The source of light should be fully shielded on the top and sides, so as not to emit light upwards or sideways, but only allowing light to shine down towards the subject that is to be lighted. For more information, visit www.darksky.org. (Section 3-2-8(b)(v), *Effects on Natural Environment, Wildlife and Wildlife Habitat, and Public Health & Safety*)

Building Standards. The All Valley Fire Council recommends that houses within this subdivision be built to International Residential Building Code (IRBC) building standards. It is recommended that any commercial buildings be constructed to meet state building code requirements. (Section 3-2-8(b)(v), *RCSR, Effects on Local Services and Public Health & Safety*)

Required Posting of County-Issued Addresses for Lots within this Subdivision. The Victor Rural Fire District has adopted the Fire Protection Standards, which requires lot owners to post County-issued addresses at the intersection of the driveway leading to each residence and the road providing access to the lot as soon as construction on the residence begins. (Section 3-2-8(b)(v), *Effects on Local Services and Public Health & Safety*)

Access Requirements for Lots within this Subdivision. The Victor Rural Fire District has adopted the Fire Protection Standards. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 22', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Victor Rural Fire District for further information. (*Section 3-2-8(b)(v), Effects on Local Services and Public Health & Safety*)

Radon Exposure. Owners must understand and accept the potential health risk from radon concentrations, which are presently undetermined at this location. Unacceptable levels of radon can be reduced through building design and abatement techniques incorporated into structures. Property owners are encouraged to have their homes tested for radon. Contact the Ravalli County Environmental Health Department for further information. (*Section 3-2-8(b)(v), Effects on Public Health & Safety*)

Wood Stoves. The County recommends that home owners refrain from installing wood stoves if possible. The County further recommends that wood and other biomass burning stoves not be used as the primary heat source. If a homeowner chooses to burn wood as a back-up heat source, the County strongly encourages them to install an EPA-certified wood stove as the best option to reduce air pollution and more specifically, to install an EPA-certified pellet stove. More information on low emission, EPA-certified wood stoves is available at <http://www.epa.gov/woodstoves/index.html>. The State of Montana offers an Alternative Energy Systems Tax Credit to offset the cost of purchasing and installing a low emission wood or biomass combustion device such as a pellet or wood stove. Besides the tax credit for qualifying wood stoves, individual Montana residents can claim a tax credit for energy conservation investments made to a home or other building. For more information on the energy conservation tax credits and ways to save energy, please see the *Warm Hearts, Warm Homes* webpage (<http://deq.mt.gov/Energy/warmhomes/index.asp>) on the Montana Department of Environmental Quality's website. (*Section 3-2-8(b)(v), Effects on the Natural Environment*)

Control of Noxious Weeds. A weed control plan has been filed in conjunction with this subdivision. Lot owners shall control the growth of noxious weeds on their respective lot(s). Contact the Ravalli County Weed District for further information. (*Section 3-2-8(b)(v), Effects on Agriculture and Natural Environment*)

Archeological Resources. If any archaeological, historic, or paleontological sites are discovered during road, utility, or building construction, all work will cease and the State Historic Preservation Office shall be contacted to determine if the find constitutes a cultural resource and if any mitigation or curation is appropriate. (*Section 3-2-8(b)(v), RCSR, Effects on Natural Environment*)

Amendment. Written governing body approval shall be required for amendments to provisions of the covenants that were required to be included as a condition of subdivision approval. *(Effects on all six criteria)*

3. The subdividers shall include an RSID/SID waiver in a notarized document filed with subdivision plat that states the following: Owners and their successors-in-interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to a community water system, a community wastewater treatment system, and improving and/or maintaining the roads that access the subdivision including related right-of-way, drainage structures, and traffic control signs. *(Section 3-2-8(b)(v), Effects on Local Services)*
4. The subdivider shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision. *(Section 3-2-8(b)(v), Effects on Local Services and Public Health & Safety)*
5. Prior to final plat approval, the subdividers shall provide a letter from the Victor Rural Fire District stating that the subdividers have provided the required 1,000 gallon-per-minute water supply or 2,500 gallon-per-lot water storage for fire protection for each lot within this subdivision. Alternatively, the subdividers may provide evidence that a \$500-per-lot contribution has been made to the Victor Rural Fire District with the final plat submittal in lieu of the required water supply or water storage for fire protection. *(Section 3-2-8(b)(v), Effects on Local Services and Public Health & Safety)*
6. The following statement shall be shown on the final plat: "The Victor Rural Fire District has adopted the Fire Protection Standards. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 22', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Victor Rural Fire District for further information". *(Section 3-2-8(b)(v), Effects on Local Services and Public Health & Safety)*
7. The subdivider shall submit an (amount)-per-lot contribution made to the County Treasurer's Office to be submitted into an account for Public Safety (Sheriff, E-911, OEM) prior to final plat approval. *(Section 3-2-8(b)(v), Effects on Local Services and Public Health and Safety)*
8. The final plat shall show a no-ingress/egress zone along the eastern boundary of Lot 2 and Lot 3, except for the common access, to prevent access from this subdivision to US Highway 93. Additionally, as shown on the preliminary plat, the final plat shall show a no-ingress/egress zone along the western boundary of the 60' driveway easement on Lot 3. *(Section 3-2-8(b)(v), Effects on Local Services and Public Health & Safety)*

9. The final plat shall show 10-foot wide irrigation easements along the drainage traversing the property from west to east along the northern property boundary. *(Section 3-2-8(b)(v)(B), RCSR, Effects on Agricultural Water User Facilities)*
10. A "no build/alteration zone" shall be shown on the final plat stretching from the northern property boundary to 50 feet south of the drainage at all points in which the drainage traverses the property. The 10-foot wide irrigation easement shall not be included in the no-build/alteration zone. *(Section 3-2-8(b)(v), Effects on Natural Environment and Wildlife & Wildlife Habitat)*

FINAL PLAT REQUIREMENTS (RAVALLI COUNTY SUBDIVISION REGULATIONS)

The following items shall be included in the final plat submittal, as required by the Ravalli County Subdivision Regulations, Section 3-4-4(a) et seq.

1. A statement from the project surveyor or engineer outlining how each final plat requirement or condition of approval has been satisfied shall be submitted with the final plat submittal.
2. One paper and two mylar 18" x 24" or larger copies of the final plat, completed in accordance with the Uniform Standards for Final Subdivisions Plats (ARM 8.94.3003). (One paper copy may be submitted for the first proofing.) shall be submitted prior to final plat approval. The final plat shall conform to the preliminary plat decision. The following features are required on the Final Plat:
 - Project name
 - Title block
 - Certificate of registered owner – notarized
 - Certificate of registered land surveyor with seal
 - Certificate of governing body approval
 - Signature block for Clerk and Recorder, preferably in lower right hand corner
 - Other certifications as appropriate
 - North arrow
 - Graphic scale
 - Legal description
 - Property boundaries (bearings, lengths, curve data)
 - Pertinent section corners and subdivision corners
 - Names of adjoining subdivisions/certificates of survey
 - Monuments found
 - Witness monuments
 - Acreage of subject parcel
 - Curve data (radius, arc length, notation of non-tangent curves)
 - Line data (lengths to tenths of a foot, angles/bearings to nearest minute)

- Lots and blocks designated by number (dimensions/acreage)
 - Easements/rights of ways (location, width, purpose, ownership)
 - No-ingress/egress zones
 - Water resources (rivers, ponds, etc.)
 - Floodplains
 - Irrigation canals including diversion point(s), etc.
 - High-pressure gas lines
 - Existing and new roads (names, ownership, etc.)
3. The original copy of the preliminary plat decision shall be submitted with the final plat submittal.
 4. Any variance decisions shall be submitted with the final plat submittal.
 5. Copies of extensions of the preliminary plat approval period shall be submitted with the final plat submittal.
 6. The final plat review fee shall be submitted with the final plat submittal.
 7. A Consent to Plat form, including notarized signatures of all owners of interest, if the developer is not the underlying title holder, shall be submitted with the final plat submittal.
 8. A Title Report or updated Abstract dated no less than one (1) year prior to the date of submittal shall be submitted with the final plat submittal.
 9. The DEQ Certificate of Subdivision Approval or RCEH approval shall be submitted with the final plat submittal.
 10. Copy of the General Discharge Permit for Stormwater Associated with Construction Activity from the DEQ shall be submitted with the final plat submittal.
 11. The approved Ground Disturbance and Noxious Weed Management Plan for the control of noxious weeds and the re-vegetation of all soils disturbed within the subdivision shall be submitted with the final plat submittal.
 12. Road and driveway approach and encroachment permits shall be submitted with the final plat submittal.
 13. Final Road Plans and Grading and Storm Water Drainage Plan shall be submitted with the final plat submittal, if needed.
 14. Road certification(s) shall be submitted with the final plat submittal.
 15. Utility availability certification(s) shall be submitted with the final plat submittal.
 16. Common access maintenance agreement(s), signed and notarized, shall be submitted with the final plat submittal.
 17. Written and notarized documentation showing how the water rights are to be divided or written and notarized documentation indicating that the water rights will be removed from the property shall be submitted with the final plat submittal.
 18. Protective covenants to be filed with the final plat that are signed and notarized shall be submitted with the final plat submittal.
 19. A copy of the letter sent to the appropriate school district(s) stating the applicant has made or is not willing to make a voluntary contribution to the school district to mitigate impacts of the subdivision on the school district

that are not related to capital facilities; shall be submitted with the final plat submittal.

20. Evidence that improvements have been made in accordance with the conditions of approval and requirements of final plat approval and certified by the subdivider, Professional Engineer, or contractor, as may be appropriate and required, shall be submitted with the final plat submittal. A Professional Engineer's certification shall be required in any instance where engineered plans are required for the improvement. Alternatively, an improvements agreement and guaranty shall be required. (Refer to Section 3-4-2.)

- Specific infrastructure improvement required for this subdivision is the construction of the common access off of US Highway 93.

SUBDIVISION REPORT

COMPLIANCE WITH PREREQUISITES TO APPROVAL

Section 3-2-8(a) of the RCSR states that the BCC shall not approve or conditionally approve a subdivision application and preliminary plat unless it establishes by credible evidence that the proposed subdivision meets the following requirements:

A. Provides easements for the location and installation of any planned utilities.

Findings of Fact

1. Existing and proposed utility easements are located along US Highway 93 and Meridian Road. (Pappas Subdivision Application and Preliminary Plat)
2. Existing and proposed utility easements are required to be shown on the final plat. (Final Plat Requirement 2)

Conclusion of Law

The proposed subdivision application provides for utility easements.

B. Provides legal and physical access to each parcel within the subdivision and the notation of that access is included on the applicable plat and in any instrument transferring the parcel.

Findings of Fact

1. The subject property is accessed by US Highway 93 and Meridian Road. (Pappas Subdivision Application)
2. Lot 1 will access from an existing driveway off Meridian Road. (Pappas Preliminary Plat)
3. Lots 2 and 3 will access off of Eastside Highway from a common access located on the southern boundary of Lot 3. Lot 2 will be accessed via a 60' driveway easement on Lot 3. (Pappas Preliminary Plat)
4. Meridian Road is listed as a county-maintained road. (Exhibit A, RCSR)
5. US Highway 93 is listed as a state-maintained road. (Ravalli County GIS)

6. The subdivider attained an approach permit from the Ravalli County Road and Bridge Department (RCRBD) for the residential access off of Meridian Road on October 23, 1997. (Pappas Subdivision Application, Final Plat Requirement 12)
7. In a letter dated March 4, 2008, MDT provided comment that the approach off of US Highway 93 appears to be approvable. The letter also states that after a cursory review the two buildings would not generate enough traffic volumes to warrant highway mitigation. (Pappas Subdivision Application)

Conclusion of Law

Legal and physical access will be provided for each lot.

- C. Assures that all required public or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by Section [3-4-2] of these regulations.**

Finding of Fact

The applicant is required to submit evidence that the improvements have been made in accordance with the conditions of approval and requirements of final plat approval and certified by the subdivider prior to final plat approval (Final Plat Requirements 1 and 20).

1. The common approach shall be constructed in accordance with the final approach permit issued by the Montana Department of Transportation.

Conclusion of Law

The final plat requirements or an improvements agreement and guaranty will ensure that all improvements are installed.

- D. Assures that the requirements of 76-3-504(1)(j), MCA, regarding the disclosure and disposition of water rights as set forth in Chapter 5 have been considered and will be accomplished before the final plat is submitted.**

Findings of Fact

1. The property has decreed water rights from Fred Burr Creek by means of the Thrailkill Ditch. (Pappas Subdivision Application)
2. All water rights for this subdivision will be retained by the owner of Lot 1. (Pappas Subdivision Application)
3. *The notifications document clarifies the disposition of water rights within this property. (Condition 1)*

Conclusion of Law

With the mitigating conditions of approval, this requirement will be met.

- E. Assures that the requirements of 76-3-504(1)(k) MCA, regarding watercourse and irrigation easements as set forth in Chapter 5 have been considered and will be accomplished before the final plat is submitted.**

Findings of Fact

1. An irrigation pipeline runs in a general east to west direction along the southern portion of the property for approximately 900 feet beginning at the pump house in the southwest corner of the property. (Pappas Application and Preliminary Plat)
2. An irrigation ditch traverses through the property several times along the northern property line. This ditch is proposed to have a 10 foot easement anytime it passes through the property. (Pappas Preliminary Plat)
3. There is a trench from the pond nearest the existing house to the pond on Lot 2. (Pappas Preliminary Plat)
4. *To ensure that the appropriate irrigation easements are in place and future owners are aware they cannot plant or build within the easements, the following requirements and conditions shall be met prior to final plat approval:*
 - *A notification of the irrigation easements for both the ditch and the pipeline shall be included in the notifications document. (Condition 1)*
 - *The final plat shall show 10-foot wide irrigation easements along the irrigation ditch traversing the property. (Condition 9)*
 - *Section 3-4-4(a)(ii)(V) requires that the irrigation easements be shown on the final plat. (Final Plat Requirement 2)*

Conclusion of Law

With the requirements and conditions of final plat approval, this prerequisite will be met.

- F. Provides for the appropriate park dedication or cash-in-lieu, if applicable.**

Findings of Fact

1. Three lots are proposed with this subdivision, two of which are proposed as commercial. (Application)
2. Both commercial lots are two-acres in size, and the residential lot is greater than five-acres in size. (Application)
3. Parcels intended for nonresidential purposes, as well as residential lots larger than five-acres in size, are exempt from parkland dedication. (RCSR 6-1-5(b))

Conclusion of Law

No parkland dedication is required of this subdivision.

COMPLIANCE WITH APPLICABLE REGULATIONS

Section 3-2-8(b) of the RCSR states that in approving, conditionally approving, or denying a subdivision application and preliminary plat, the BCC shall ensure the subdivision application meets Section 3-2-8(a) above, and whether the proposed subdivision complies with:

A. These regulations, including, but not limited to, the standards set forth in Chapter 5.

Findings of Fact

1. The applicant is requesting a variance from Section 5-2-2 (c) of the Ravalli County Subdivision Regulations, which requires when a subdivision with more than two lots fronts on a public road classified as minor collector or higher, all lots within the subdivision shall access off of a road internal to the subdivision. Instead, the applicant has proposed accessing two lots off of a common access from US Highway 93 and the other lot from Meridian Road. (Pappas Subdivision File)
2. This development plan proposal has followed the necessary application procedure and has been reviewed within the procedures provided in Chapter 3 of the Ravalli County Subdivision Regulations. (Pappas Subdivision File)

Conclusions of Law

The procedures for the application and review of this proposed subdivision have been followed.

B. Applicable zoning regulations.

Findings of Fact

1. The subject property is under the jurisdiction of the interim zoning regulation limiting subdivisions to a density of one dwelling per two acres (recorded as Resolution 2193). The application complies with Resolution 2193.
2. The property is not within one of the voluntary zoning districts in Ravalli County. (Ravalli County GIS Data)

Conclusion of Law

This proposal appears to comply with existing zoning regulations.

C. Existing covenants and/or deed restrictions.

Finding of Fact

1. There are existing covenants on the property. (Ravalli County Clerk & Recorder's Office, Pappas Subdivision Application)
2. Covenants relevant to this proposal state that permitted uses include light industry and local business, and that mobile homes and junkyards are prohibited. (Pappas Subdivision Application)
3. The applicant's proposal meets the existing covenants on the property. (Pappas Subdivision Application)

Conclusion of Law

The subdivision proposal meets the existing covenants on the property.

D. Other applicable regulations.

Findings of Fact

1. Following are regulations that may apply to this subdivision:
 - Montana Subdivision and Platting Act, Title 76, Chapter 3, MCA
 - Montana Sanitation in Subdivisions Act, Title 76, Chapter 4, MCA
 - Ravalli County Subsurface Wastewater Treatment and Disposal Regulations
 - Montana Standards for Subdivision Storm Drainage (DEQ Circular 8)
 - Applicable laws and policies requiring permits related to development (U.S. Army Corps of Engineers, Bitterroot Conservation District, Ravalli County Road & Bridge Department, Montana Department of Transportation, Montana Department of Environmental Quality, etc.)
2. The applicant was made aware of the applicable regulations at pre-application conferences held on July 16, 2007 and April 28, 2008. (Pappas Subdivision File)
3. Prior to final plat approval, the applicant is required to submit permits and evidence that they have met applicable regulations. (Section 3-4-4(a), RCSR)

Conclusion of Law

With the final plat requirements, the application will meet the applicable regulations.

E. The MSPA, including but not limited to an evaluation of the impacts of the subdivision on the following criteria:

CRITERION 1: EFFECTS ON AGRICULTURE

Findings of Fact:

1. The proposed minor subdivision on 20.6 acres will result in 3 lots that range in size from 3.55 acres to 13.35 acres. The property is located approximately four miles south of the town of Victor. (Pappas Subdivision Application)
2. The subject parcel is classified for tax purposes as farmstead rural. (Montana Cadastral Database created by Montana Department of Administration, Information Technology Services Division, Geographic Information Services)
3. Parcels adjacent to the subject property are classified for tax purposes as agricultural rural, farmstead rural, commercial rural and residential rural. (Montana Cadastral Database created by Montana Department of Administration, Information Technology Services Division, Geographic Information Services)
4. The new soils data available from the NRCS Web Soil Survey shows that there is no prime farmland or soils of statewide importance. (Pappas Subdivision Application)

5. In a letter dated August 27, 2008, State Conservationist Dave White of the Natural Resource Conservation Service confirmed that the NRCS soils staff would no longer utilize the farmland of local importance soils classification, per the request of the Bitterroot Conservation District. (Exhibit A-1)
6. During a phone conversation on September 24, 2008, Julie Ralston of the Bitterroot Conservation District summarized the reasoning for eliminating the farmland of local importance soils classification. (Exhibit A-2)
7. The applicant submitted a Ravalli County Subdivision Noxious Weed Evaluation Form that stated spotted knapweed was found on the property. (Pappas Subdivision Application)
8. Any person proposing a development that needs state or local approval and that results in the potential for noxious weed infestation within a weed district shall notify the weed board at least 15 days prior to activity. Consequently, 15 days prior to activities requiring a revegetation plan, such as road construction, a plan shall be submitted to the weed board for approval by the board. (7-22-2152, MCA)
9. *Following are conditions and requirements of final plat approval that will mitigate the impacts of the subdivision on agriculture:*
 - *A notification of proximity to agricultural operations shall be included in the notifications document filed with the final plat. The protective covenants, also filed with the final plat, shall include a provision requiring homeowners to keep pets confined to the house, a fenced yard, or in an outdoor kennel. (Conditions 1 and 2)*
 - *The approved Ground Disturbance and Noxious Weed Management Plan is required to be submitted prior to final plat approval. (Final Plat Requirement 11)*
 - *A noxious weed control provision shall be included in the protective covenants filed with the final plat for this subdivision. (Condition 2)*

Conclusion of Law:

With the mitigating conditions of approval and requirements of final plat approval, the impacts of the subdivision on agriculture will be reduced.

CRITERION 2: EFFECTS ON AGRICULTURAL WATER USER FACILITIES

Findings of Fact

1. The property has decreed water rights from Fred Burr Creek by means of the Thrailkill Ditch. (Pappas Subdivision Application)
2. All water rights for this subdivision will be retained by the owner of Lot 1. (Pappas Subdivision Application)
3. An irrigation pipeline runs in a general east to west direction along the southern portion of the property for approximately 900 feet beginning at the pump house in the southwest corner of the property. (Pappas Application and Preliminary Plat)
4. An irrigation ditch/natural drainage traverses through the property several times along the northern property line. This ditch is proposed to have a 10

foot easement anytime it passes through the property. (Pappas Preliminary Plat)

5. There is a trench from the pond nearest the existing house to the pond on Lot 2. (Pappas Preliminary Plat)
6. In an email dated August 25, 2008, Larry Schock of the DNRC Water Resources Division stated that even though the average lot size is larger than 5 acres, DNRC would still recommend that the water rights associated with the proposed subdivision be address by identifying a single entity to oversee the water rights. (Exhibit A-5)
7. Since all water rights for this subdivision will be retained by the owner of Lot 1 there is no need to create a single entity to oversee water rights for this subdivision. (Staff Determination)
8. *To mitigate impacts on agriculture water users facilities, the following requirements and conditions shall be met prior to final plat approval:*
 - *The notifications document clarifies the disposition of water rights within this property. (Condition 1)*
 - *A notification of the irrigation easements for the ditch shall be included in the notifications document. (Condition 1)*
 - *The final plat shall show 10-foot wide irrigation easements along the irrigation ditch traversing the property. (Condition 9)*
 - *Section 3-4-4(a)(ii)(V) requires that the irrigation easements be shown on the final plat. (Final Plat Requirement 2)*

Conclusion of Law

With the conditions and requirements of final plat approval, impacts to agricultural water user facilities will be minimized.

CRITERION 3: EFFECTS ON LOCAL SERVICES

Findings of Fact:

Fire District

1. The subdivision is located within the Victor Rural Fire District. (Pappas Subdivision Application)
2. Notification letters were sent to the Victor Rural Fire District requesting comments on July 22, 2008 and September 17, 2008, but no comments have been received from the Fire District. (Pappas Subdivision File)
3. The Victor Rural Fire District has adopted the Fire Protection Standards, which address access, posting of addresses, and water supply requirements. (Exhibit A-3)
4. *The following conditions will mitigate impacts of the subdivision on the Fire District:*
 - *Provisions in the covenants shall require that addresses are posted as soon as construction begins and that all driveways over 150 feet meet the standards of the Fire District. (Condition 2)*
 - *A provision in the covenants shall recommend that houses within the subdivision be built to IRBC standards. (Condition 2)*

- *The subdivider shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision. (Conditions 2 and 4)*
- *Prior to final plat approval, the subdividers shall provide a letter from the Victor Rural Fire District stating that the subdividers have provided the required 1,000 gallon-per-minute water supply or 2,500 gallon-per-lot water storage for fire protection for each lot within this subdivision. Alternatively, the subdividers may provide evidence that a \$500-per-lot contribution has been made to the Victor Rural Fire District with the final plat submittal in lieu of the required water supply or water storage for fire protection. (Condition 5)*
- *The following statement shall be shown on the final plat: "The Victor Rural Fire District has adopted the Fire Protection Standards. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 22', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Victor Rural Fire District for further information". (Condition 6)*

School District

5. With this subdivision, it is estimated that no school-aged children will be added to the Victor School District. (Pappas Subdivision File)
6. This subdivision will have no impact on the school district. (Staff Determination)

Roads

7. This subdivision will add 100 additional trips per day to US Highway 93. (Pappas Subdivision Application)
8. Lot 1 will access from an existing driveway off Meridian Road. (Pappas Preliminary Plat)
9. Lots 2 and 3 will access off of Eastside Highway from a common access located on the southern boundary of Lot 3. Lot 2 will be accessed via a 60' driveway easement on Lot 3. (Pappas Preliminary Plat)
10. Meridian Road is listed as a county-maintained road. (Exhibit A, RCSR)
11. US Highway 93 is listed as a state-maintained road. (Ravalli County GIS)
12. The subdivider has attained an approach permit from the Ravalli County Road and Bridge Department (RCRBD) for the residential access off of Meridian Road on October 23, 1997. (Pappas Subdivision Application, Final Plat Requirement 12)
13. In a letter dated March 4, 2008, MDT provided comment that the approach off of US Highway 93 appears to be approvable. The letter also states that after a cursory review the two buildings would not generate enough traffic volumes to warrant highway mitigation. (Pappas Subdivision Application)
14. *To mitigate impacts on the roads leading to the subdivision, the following conditions and requirements shall be met:*

- *A copy of the General Discharge Permit for Stormwater Associated with Construction Activity from DEQ shall be submitted prior to final plat approval, if applicable. (Final Plat Requirement 10)*
- *The notifications document filed with the final plat shall include a statement notifying lot owners of the no ingress/egress restriction. (Condition 1)*
- *The notifications document filed with the final plat shall include a statement notifying lot owners of the common access maintenance agreement. (Condition 1)*
- *To mitigate potential impacts of this subdivision on any possible future public water, sewer system, or improvements to the road system, the RSID/SID waiver filed with the final plat shall address these services/facilities. (Conditions 2 and 3)*
- *The final plat shall show a no-ingress/egress zone along the eastern boundary of Lot 2 and Lot 3, except for the common access, to prevent access from this subdivision to US Highway 93. Additionally, as shown on the preliminary plat, the final plat shall show a no-ingress/egress zone along the western boundary of the 60' driveway easement on Lot 3. (Condition 8 and Final Plat Requirement 2)*

Public Safety

15. The Ravalli County Sheriff's Office provides law enforcement services to this area. (Pappas Subdivision Application)
16. Notification letters were sent to the Ravalli County Sheriff's Office requesting comments on July 22, 2008 and September 17, 2008, but no comments have been received from the Sheriff's Office. (Pappas Subdivision File)
17. The average number of people per household in Ravalli County is 2.5. This subdivision is estimated to add no new people to the County. (Census 2000)
18. Taxes from new commercial buildings may not be immediately available to law enforcement services, E-911, or the Department of Emergency Services (DES). There is no available information on the average amount of time between when public safety services begin to serve a new residence and when public safety services receive tax money from that residence. (Staff Determination)
19. The applicant is proposing a \$250-per-new-lot contribution to be paid into an account for Public Safety. (Exhibit A-4)
20. *To mitigate impacts on local services, the subdivider shall submit an (amount)-per-lot contribution to the County Treasurer's Office to be submitted into an account for Public Safety (Sheriff, E-911, OEM) prior to final plat approval. (Condition 8)*

Emergency Services

21. Ambulance services will be provided by Marcus Daly Memorial Hospital EMS Department. Marcus Daly Hospital was contacted on July 22, 2008 and September 17, 2008 but no comments have been received to date. (Pappas Subdivision Application)

22. *To mitigate impacts on emergency services, the subdivider shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision. (Condition 4)*

Water and Wastewater Districts

23. Individual wells and wastewater treatment systems are proposed to serve the lots. The property is not near any municipal water or wastewater systems. (Pappas Subdivision Application)

Solid Waste Services

24. Bitterroot Disposal provides service to this site. (Pappas Subdivision Application)
25. Notification letters were sent to Bitterroot Disposal requesting comments on July 22, 2008 and September 17, 2008, but no comments have been received. (Pappas Subdivision File)

Utilities

26. Existing utility easements are located along US Highway 93 and Meridian Road. (Pappas Subdivision Application and Preliminary Plat)
27. The proposed subdivision will be served by Northwestern Energy Company and Qwest Communications. (Pappas Subdivision Application)
28. Notification letters were sent to Northwestern Energy Company and Qwest Communications requesting comments on July 22, 2008 and September 17, 2008, but no comments have been received by the company. (Pappas Subdivision File)
29. *The following requirements will mitigate impacts of the subdivision on local utilities:*
 - *Existing utility easements shall be shown on the final plat. (Final Plat Requirement 2)*
 - *The applicant shall submit a utility availability certification from Northwestern Power Company and Qwest Communications prior to final plat approval. (Final Plat Requirement 15)*

Conclusion of Law:

With the mitigating conditions of approval and requirements of final plat approval, impacts of the subdivision on local services will be reduced.

CRITERION 4: EFFECTS ON NATURAL ENVIRONMENT

Findings of Fact:

Air Quality

1. This proposed subdivision would add two new commercial businesses to an area of existing low density development south of Victor. (Pappas Preliminary Plat, Site Visit)
2. The Montana Department of Environmental Quality (DEQ) has reviewed the PM_{2.5} (particulate matter ≤ 2.5 micron) data collected in 2007 and incorporated it into the PM_{2.5} dataset from the previous three years (2004-2006). As part of that analysis, DEQ identified several communities that continue to experience poor air quality during certain time periods each year. Those communities are located in the following counties: Lincoln, Missoula, Silver Bow, Ravalli, Gallatin, Lewis & Clark, Flathead, Sanders, Yellowstone and Cascade. (Exhibit A-6)

3. The Montana DEQ has identified that burning sources – such as fireplaces and wood stoves – are the most common sources of particulate matter (PM-10 and PM-2.5). The smaller PM-2.5 particles, often referred to as "fine particulates," are easily inhaled and can cause tissue damage, emphysema, bronchitis, and cardiovascular complications. Children, seniors, and individuals with pre-existing respiratory diseases are most susceptible to these health risks. (Montana DEQ Citizens Guide to Air Quality in Montana' <http://www.deq.mt.gov/AirMonitoring/citguide/understanding.asp>)
4. Sources of particulate from this subdivision could include vehicles and wood-burning stoves. (Staff Determination)
5. *To mitigate impacts on air quality, the covenants shall include a recommendation that EPA-certified wood stoves should be installed to reduce air pollution and that wood burning stoves should not be used as the primary heat source. (Condition 2)*

Surface Water

6. In a letter from FWP dated September 24, 2008, they state that the USGS Topographic map for this vicinity depicts a natural drainage running west to east in and out of the northern boundary of proposed Lot 2, and the plat has "ditch/creek" labeled in the northeastern corner of that lot. Viewing aerial photographs of this site, the natural drainage appears to link to Fred Burr Creek (and ultimately the Bitterroot River) east of this subdivision. (Exhibit A-7)
7. *To mitigate impacts on surface water, the following conditions shall be met:*
 - *Riparian Use Guideline covenants shall be included in the covenants document. (Condition 2)*
 - *A "no build/alteration zone" shall be labeled on the final plat running from the northern property boundary to 50 feet south of the drainage at all points in which the drainage traverses the property. The 10-foot wide irrigation easement shall not be included in the no-build/alteration zone. (Condition 10)*

Ground Water Quality

8. The applicant is proposing individual wells and wastewater facilities. (Pappas Subdivision Application)
9. The applicant submitted water and sanitation information per MCA 76-3-622. The Ravalli County Environmental Health Department provided documentation indicating that they have received adequate information for local subdivision review to occur. (Pappas Subdivision Application)
10. *To mitigate impacts on ground water quality, the following requirements and conditions shall be met:*
 - *The applicant is required to submit the DEQ Certificate of Subdivision Approval prior to final approval. (Final Plat Requirement 9)*

Light Pollution

11. The addition of two new commercial buildings in an area that currently has low density development has the potential to create light pollution. Sky glow, glare, light

trespass into neighbor's homes, and energy waste are some of the components of light pollution. (International Dark-Sky Association)

12. *To mitigate the impacts of light pollution stemming from new construction, the protective covenants shall include a provision recommending full cut-off lighting on new construction. (Condition 2)*

Vegetation

13. The applicant submitted a Ravalli County Subdivision Noxious Weed Evaluation Form that stated spotted knapweed was found on the property. (Pappas Subdivision Application)
14. According to MCA 7-22-2152, any person proposing a development that needs state or local approval and that results in the potential for noxious weed infestation within a weed district shall notify the weed board at least 15 days prior to activity. Consequently, 15 days prior to activities requiring a revegetation plan, such as road construction, a plan shall be submitted to the weed board for approval by the board. (MCA 7-22-2152)
15. The Montana Natural Heritage Program found that there were no plant species of concern within the same section as the subject property (Pappas Subdivision Application).
16. *To mitigate impacts on the natural environment:*
 - *A noxious weed control provision shall be included in the protective covenants filed with the final plat for this subdivision. (Condition 2)*
 - *The applicant is required to submit the approved Ground Disturbance and Noxious Weed Management Plan prior to final plat approval. (Final Plat Requirement 11)*

Noise Levels

17. Due to the proximity of this proposed subdivision to the Bitterroot River, there is a possibility of conflict between waterfowl hunters and the subdivision. The sound of the lawful discharge of shotguns may create some concern by the residents. Waterfowl hunting occurs from early morning until sunset, and the season can run from September into January. In a letter dated September 24, 2008, FWP recommend a covenant to address the issue. (Exhibit A-7)
18. *To mitigate impacts of the subdivision being in close proximity to noise from hunting along the Bitterroot River, a notification of the potential noise shall be included in the covenants. (Condition 2)*

Historical/Archeological Sites

16. The application states that there are no known sites of historical significance on the property. (Pappas Application)
17. *The covenants shall include an archeological resources section. (Condition 2)*

Conclusion of Law:

Impacts from this subdivision on the natural environment will be reduced with the mitigating conditions and requirements of final plat approval

CRITERION 5: EFFECTS ON WILDLIFE & WILDLIFE HABITAT

Findings of Fact:

In a letter received September 24, 2008, FWP stated that this property has an elevated probability of human/wildlife conflict and recommended including "living with wildlife" covenants. (Exhibit A-7)

FWP stated that wildlife such as white-tailed deer, coyote, fox, raccoon and skunk, as well as an occasional black bear and possible mountain lion, could be expected in this area. Numerous small mammal and bird species would also be found nearby, many associated with widespread riparian areas and trees/shrubs associated with Fred Burr Creek and the Bitterroot River bottom. (Exhibit A-7)

The property is not located within big-game winter range. (FWP Data)

According to the Montana Natural Heritage Program, Gray Wolf, Fringed Myotis, Northern Alligator Lizard, Bald Eagle, Bobolink, Townsend's Big-eared Bat, Bull Trout, Westslope Cutthroat Trout, Bobolink, and Bird Rookery were identified as species of concern as they have been known to exist in the same section as the proposed subdivision. The subdivider submitted a sensitive species report that was prepared by Log Cabin Environmental Consulting. The report stated none of these species were observed on this property during a site visit in May of 2008 and the property does not provide habitat for most of the species of concern. (Pappas Subdivision Application, Pappas Subdivision File)

The sensitive species report states that a few large cottonwoods in the northeast corner of the Lot 2 near the drainage could provide limited habitat for the Bald Eagle and Lewis's Woodpecker, and these trees should be preserved. (Pappas Subdivision File)

The "no build/alteration zone" will include the large cottonwoods in the northeast corner of Lot 2, guaranteeing they will be preserved. (Pappas Subdivision File)

To mitigate impacts on wildlife and wildlife habitat, the following conditions shall be met:

- *The covenants shall include a living with wildlife section. (Condition 2)*
- *The covenants shall include a provision recommending full cut-off lighting. (Condition 2)*
- *A "no build/alteration zone" shall be labeled on the final plat running from the northern property boundary to 50 feet south of the drainage at all points in which the drainage traverses the property. The 10-foot wide irrigation easement shall not be included in the no-build/alteration zone. (Condition 10)*

Conclusion of Law:

With the mitigating conditions of approval, impacts on Wildlife & Wildlife Habitat will be reduced.

CRITERION 6: EFFECTS ON PUBLIC HEALTH & SAFETY

Findings of Fact:

Traffic Safety

1. Access is proposed via US Highway 93 and Meridian Road. (Pappas Subdivision Application)
2. *The requirements and conditions listed under Roads in Criterion 3 will mitigate the impacts of the subdivision on traffic safety.*

Emergency Vehicle Access and Response Time

3. The proposed subdivision will be served by the Victor Rural Fire District, the Ravalli County Sheriff's Office, and Marcus Daly Memorial Hospital EMS Department. (Pappas Subdivision Application)
4. The property is located 4 miles from the nearest fire station. (Pappas Subdivision Application)
5. The property is located approximately 12 miles from the Sheriff's Dispatch in Hamilton. (Pappas Subdivision Application)
6. *The requirements and conditions listed under Fire District, Law Enforcement, Emergency Services, and Roads in Criterion 3 will mitigate the impacts of the subdivision on emergency vehicle access and response time.*

Water and Wastewater

7. The applicant is proposing individual wells and wastewater facilities. The applicant submitted water and sanitation information per MCA 76-3-622. The Ravalli County Environmental Health Department provided documentation indicating that they have received adequate information for local subdivision review to occur. (Pappas Subdivision Application)
8. *To mitigate effects on water and wastewater, the DEQ Certificate of Subdivision Approval, RCEH approval shall be submitted with the final plat submittal. (Final Plat Requirement 9)*

Natural and Man-Made Hazards

9. According to a document titled "Radon and You, Promoting Public Awareness of Radon in Montana's Air and Ground Water" published by DEQ and the Montana Bureau of Mines and Geology, there is a high potential for radon in Ravalli County. (DEQ)
10. The addition of two new commercial buildings in an area that currently has low density development has the potential to create light pollution. Sky glow, glare, light trespass into neighbor's homes, and energy waste are some of the components of light pollution. (International Dark-Sky Association)
11. Within this subdivision there are areas of the property identified as potentially having soils rated as very limited for roads and building sites, as shown on the plat. (Pappas Preliminary Plat)
12. *To mitigate possible impacts on public health and safety, the following conditions shall be met:*
 - *A notification of very limited soils shall be included in the notification document. (Condition 1)*
 - *The covenants shall include a provision recommending full cut-off lighting on new construction. (Condition 2)*
 - *The covenants shall include a statement regarding radon exposure. (Condition 2)*

Conclusion of Law:

The mitigating conditions and requirements of final plat approval will address impacts on Public Health & Safe

VARIANCE REQUEST

The subdivider is requesting a variance from Section 5-2-2 (c) of the Ravalli County Subdivision Regulations, which requires when a subdivision with more than two lots fronts on a public road classified as minor collector or higher, all lots within the subdivision shall access off of a road internal to the subdivision. Instead, the applicant has proposed accessing the two commercial lots off of a common access from US Highway 93 and the other existing residential lot from Meridian Road.

Variance Analysis

Section 7-3-5(a), RCSR, outlines two sets of criteria to be used in analyzing a variance request.

Prerequisite Variance Criteria

In order for a variance to be considered for approval, the BCC must first determine that the variance request meets these stipulations:

1. Strict compliance with these regulations will result in undue hardship.
2. Compliance is not essential to the public welfare.

Variance Review Criteria

After a determination is made on both of the prerequisite criteria, the BCC may then consider the variance for approval, based on the five variance review criteria:

- A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.
- B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.
- C. Physical conditions, such as topography or parcel shape, prevent the subdivider from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).
- D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.
- E. The variance will not cause a substantial increase in public costs.

Both sets of criteria were reviewed simultaneously. Findings for Prerequisite Criterion #1 are based on an analysis of Variance Review Criteria B and C. Findings for Prerequisite Criterion #2 are based on an analysis of Variance Review Criteria A, D, and E.

Five Variance Review Criteria

A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.

Findings of Fact:

1. The applicant is proposing to construct a common access for Lot 2 and Lot 3 of the proposed subdivision. (Pappas Variance Application)
2. The proposed common access will also serve the lot to the south, COS 586266-F. (Pappas Preliminary Plat)
3. When the number of accesses onto a high-traffic road increases, traffic efficiency declines and safety is jeopardized. (RCSR 5-4-1)
4. By combining the accesses for Lot 2 and Lot 3 with the access for the parcel to the south, this proposal will reduce the number of accesses on to US Highway 93. (Pappas Preliminary Plat)
5. An access on to US Highway 93 already exists at this location from the previous commercial business which was run on the property. (Site Visit)
6. The applicant has worked with MDT to agree upon a location for the common access. (Pappas Subdivision Application)
7. The applicant will be required to submit a common access approach and encroachment permit for the common access off of US Highway 93 prior to final plat approval. Additionally, MDT has the ability to request further mitigation for impacts to US Highway 93 based on the type of commercial enterprises proposed on the newly created parcels. (Final Plat Requirement 12)

Conclusion of Law:

The granting of the variance will not be detrimental to the public health, safety or general welfare or injurious to other adjoining properties.

B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.

Findings of Fact

1. The applicant states this variance request is based on the project configuration as proposed and is unique to this property. (Pappas Variance Application)
2. There are several lots in the county that front on two roads. (Staff Determination)
3. There are several lots in the county that have both residential and commercial activities located on them. (Staff Determination)
4. There is nothing preventing the applicant from constructing an internal road accessing the property from Meridian Road. (Staff Determination)

Conclusion of Law:

The conditions upon which the variance is proposed are not unique to the property.

C. Physical conditions, such as topography or parcel shape, prevents the subdivider from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).

Findings of Fact:

1. The applicant states that the length of the property from east to west does not yield itself well to constructing one particularly long road. (Pappas Variance Application)
2. There are many properties in the county with similar parcel shapes and sizes. (Staff Determination)
3. There do not appear to be any physically limiting conditions that would prevent the subdivider from meeting the strict letter of the RCSR. (Site Visit, Staff Determination)

Conclusion of Law:

Physical conditions do not prevent the subdivider from meeting the strict letter of the regulations.

D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.

Findings of Fact:

1. The subject property is under the jurisdiction of the interim zoning regulation limiting subdivisions to a density of one dwelling per two acres. Interim zoning does not have an effect on this variance request.
2. Relevant countywide provisions in the Ravalli County Growth Policy are outlined below. Provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of the variance request against these provisions.

Countywide Goal 4: Provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity, and cost of service to existing residents.

Countywide Policy 4.4: Improve and maintain existing infrastructure and public services.

- In receiving a common approach permit from MDT, the applicant has decreased the number of approaches onto US Highway 93. The approach will be constructed in accordance with the current highway widening project.

Countywide Goal 7: Plan for residential and commercial growth.

Countywide Policy 7.1: Encourage residential and commercial growth adjacent to existing infrastructure.

- With an approved approach permit from MDT, the proposed commercial use and access on to US Highway 93 will provide for commercial growth adjacent to existing infrastructure.

Conclusions of Law:

1. The proposal complies with the interim zoning regulation.
2. Provisions in the Growth Policy support the granting of the variance request.

E. The variance will not cause a substantial increase in public costs.

Finding of Fact:

1. The costs associated with building a common access is a private cost to be borne by the developer. (RCSR 5-1-6)
2. The applicant is required to provide all costs associated with the construction of the common access. (Final Plat Requirement 20)

Conclusion of Law:

The granting of the variance does not appear to substantially increase public costs.

Prerequisite Variance Criteria

A. Strict compliance with these regulations will result in undue hardship.

Finding of Fact:

Criteria B and C of the variance criteria were used to determine whether or not compliance with Section 5-2-2(c) created a hardship. There do not appear to be special conditions unique to this subdivision that create an undue hardship.

Conclusion of Law:

Strict compliance with these regulations will not result in undue hardship.

B. Compliance is not essential to the public welfare.

Finding of Fact:

Criteria A, D, and E of the variance criteria were used to determine whether or not compliance with Section 5-2-2(c) is essential to public welfare. Criterion A, D and E find that compliance is not essential to the public welfare.

Conclusion of Law:

Compliance is not essential to the public welfare.

C. Overall Findings and Conclusions on Hardship and Public Welfare

Findings of Fact

1. Strict compliance with these regulations will not result in undue hardship.
2. Compliance is not essential to the public welfare.
3. There is an overall positive finding on the variance review criteria.

Conclusion of Law

The variance application does not provide evidence that there is an undue hardship, but compliance with the RCSR is not essential to the public welfare.

Commissioner Rokosch opened public comment.

John Horat stated they are in agreement with the Staff Report. He briefly discussed.

Tom Dunn stated his concern is when these notifications were sent, they went to adjoining neighbors. He is not an adjoining neighbor but is affected by this subdivision and received no notification. He stated another issue is with two commercial lots and not

restricting the use. He further stated his concern with irrigation and water rights within the three lots. Randy stated all water rights will stay with lot one. Tom stated he is in disagreement with the water rights according to DNRC. John stated if the rights are severed, he is not sure to whom they would go to. Mr. Pappas added the first five acres have not been irrigated for 5 years. Tom stated then those rights have been abandoned. John stated you can transfer or sever water rights. There is transferring going on.

Rex Hendrickson lives east of the property. He stated the Thrailkill ditch is the means of transferring water to the property which he owns to the east. He stated Mr. Dunn's concerns are valid. The research done and records complied in several depositions and records with Clerk of Court, the final decision by the water master was brought up in every meeting is geographically located. On this property, there are two water rights. The Bureau of Indian affairs have been at every water hearing and have filed a claim on almost every water right. He stated Mr. Pappas believes he should have this water because it runs through his property and has a fifth right. He stated he does not believe the law allows this. If it is moved, who is to say other people can't move it? He has no objection to what they do with their property. Commissioner Chilcott asked Rex if it stays with the property but do not utilize it, will that be ok? Rex replied he has the lion's share of the fifth right and does not want to be perceived as a water hog. He stated his concern is during irrigation system. He is a down stream user east of the highway. In theory, that 10 inches will be used by Rex Hendrickson. He is not entitled to it but it should not be transferred off on that property when it was not intended by the water master.

Tom stated Jacob Thrailkill had a fifth right. He gave further history of the water rights.

John stated the Pappas are willing to sever all water rights. Commissioner Rokosch requested any further public comment, hearing none, close public comment.

Commissioner Rokosch stated there is no Planning Board comment and opened Board deliberations for the variance request.

Commissioner Chilcott made a motion to approve the variance request from Section 5-2-2 (c) of the Ravalli County Subdivision Regulations and based on the findings of fact and conclusions of law based in the Staff Report. Commissioner Thompson seconded the motion.

Discussion: Commissioner Thompson gave clarification of the access. John pointed out the access on the map and stated it will be paved with an easement along the first lot to accommodate it. Commissioner Driscoll asked about the access for Meridian Road. Randy replied they do have an existing permit for Meridian Road and is completely legal. It is good to see there is common access to the lots from the south. John stated they do not have any control over who the State grants accesses to. Commissioner Rokosch requested documentation from the Greens' for their approval of access. John asked why when the State approved their access and approved the Greens' access. Discussion followed regarding access points being common access.

Commissioner Thompson gave background on the approval of MDOT with staggered access points. Commissioner Driscoll expressed her concerns with the access points. Commissioner Chilcott stated MDOT reserved the right to review the future use of these accesses. Tristan read the access comments from MDOT. Commissioner Rokosch questioned the existing covenants. Tristan read the covenants to the Board.

Rex stated some folks settled with MDOT and some didn't. On the schematic, they show they are moving Mr. Quinn's access to a point and access the Quinns and the Greens and feel it is a plus not a negative. Their safety is enhanced if they are across from each other rather than staggered. **All voted 'aye'.**

Commissioner Rokosch opened Board deliberations of the review criteria.

Commissioner Rokosch pointed out a grammatical error on page 11 on the staff report. Randy added there is a correction on page 16 as well.

1. **Effects on Agriculture:** Commissioner Rokosch expressed his concern with important farmlands classified under local importance for agricultural purposes. Commissioner Rokosch discussed the loss of ag lands. \$250 per lot contribution to mitigate the loss of farmland. **All Commissioners voted sufficiently mitigated.**
2. **Effects on Agricultural Water-User Facilities:** The irrigation ditch is proposed to have 10 feet of irrigation easement.. Commissioner Thompson discussed water rights and what you can do with them. 20 inches of water ,13 ½ stay with lot one. They gave up 7 inches of water. Commissioner Chilcott agreed with Commissioner Thompson. He stated the water rights are a purchased asset. While the downstream user is benefiting with use. Board discussion followed regarding the water rights and downstream users. Commissioner Chilcott stated he is in disagreement with severing those rights without compensation. John stated there is the physical aspect of the water and how much has been used to consider. He discussed the cost of proving and guarantee when transferring to a public water system. Commissioner Rokosch questioned the water rights with Trailkill ditch. Randy stated DNRC was contacted. Commissioner Thompson expressed his concerns with the water rights being abandoned or severed. Commissioner Chilcott stated he would leave it up to DNRC for approval of whatever water plans there are. Discussion followed regarding the options. Commissioner Driscoll stated if they are going to sever there has to be some kind of mechanism from DNRC to protect those rights prior to final plat approval. Commissioner Rokosch questioned the proposed lot two ponds. John replied the pond is not connected to the ditch in anyway. Commissioner Rokosch pointed out language with FWP and water rights associated with the ponds. Mr. Pappas showed proof of the rights for the ponds to the Board. Commissioner Rokosch requested copies of the rights to be included for the application.

Commissioner Rokosch then reviewed the options with the water rights. Mr. Pappas stated he has visited DNRC several times and explained his problems with Mr. Hendrickson. He stated DNRC has been very helpful with clarification of Mr. Hendrickson's Rights. **All Commissioners voted sufficiently mitigated.**

3. **Effects on Local Services:** \$250 per lot for Public Safety and \$500 per lot for Fire District payable upon final plat had been offered. **All Commissioners voted sufficiently mitigated.**
4. **Effects on Natural Environment:** Commissioner Driscoll reviewed the woodstove issue on Condition 2. Commissioner Thompson discussed the noise level. Commissioner Rokosch expressed his concerns with the fish ponds and the letter received from FWP. He recommended the language be incorporated into the covenants. Mr. Pappas produced the permit for the fish in the pond. Commissioner Rokosch requested the language be incorporated into the notifications. **All Commissioners voted sufficiently mitigated.**
5. **Effects on Wildlife and Wildlife Habitat:** Commissioner Rokosch noted the sensitive species waiver. John pointed out the no build/no alteration zone along the natural drainage. **All Commissioners voted sufficiently mitigated.**
6. **Effects on Public Health and Safety:** Commissioner Rokosch stated reviewing the floodplain administrator comments there are two recommendations. Recommendations are any structures should be elevated two feet above ground level and notification recommending flood insurance as specified in the letter. Commissioner Rokosch requested the recommendations be incorporated as well. Randy stated they can be incorporated within the notifications. Commissioner Chilcott stated his concerns the word "potential" being included in the notifications as an effect on public health and safety. He would be more comfortable with giving a notification and the reasons for it. Commissioner Rokosch stated the letter states potential. Commissioner Rokosch discussed the limited soils for building sites. Tristan stated the final plat is filed with the covenants indicating the location of the limited soils. John stated when it comes time to build, it is up to the contractor. He expressed his concern with dancing around a broad-stroked study. Tristan stated it is always a part of the record. It is up to the person to read the covenants prior to purchase. **All Commissioners voted sufficiently mitigated.**

Commissioner Chilcott made a motion to approve the Pappas Minor subdivision based on the findings of fact and conclusion of law in the Staff Report and as mitigated here today. Commissioner Driscoll seconded the motion and all voted 'aye'.

► The Board met for a discussion on Budget update. Present were County Attorney George Corn, Civil Counsel Karen Mahar, Interim Planning Director Renee Lemon,

Human Resources Director Robert Jenni, Internal Auditor Klarryse Murphy, Comptroller Jana Exner, Assistant Verona Stromberg, Sheriff Chris Hoffman, Environmental Health Director Lea Jordan and Marty Bierkeneider.

Commissioner Grandstaff gave an overview of the last week. She stated she, Klarryse, and Jana have received multiple calls and emails from Department Heads struggling with cutting operating expenses by 11.5%. She would like to discuss some of the solved and unsolved problems.

George stated one of his problems is a pay issue with Karen Mahar. Karen explained the issue in detail and suggested a solution. Commissioner Grandstaff recommended accepting Karen solution to the problem. Klarryse concurred with Commissioner Grandstaff. The Board concurred.

George discussed witness fees. Karen stated with the witness fees budgeted, it would go over while waiting to be reimbursed by the State. She stated Klarryse suggested placing it into a "floating" line to avoid overages. Klarryse provided clarification of the processing of the fees and the reimbursements to the Board. She stated she has put it into a separate line item for better tracking under the general fund.

George stated he has some line items that need to be shifted. He explained there is a grant that expired and the money dried up. He requested shifting some line items to keep an employee for three months and Sheriff Hoffman can come up with the last month for pay. George discussed the possibility of funding this employee on a part time basis through federal grants. Karen stated it would not be so much a "shifting" but to use the temp line to fund this employee. Sheriff Hoffman stated the fact is they have not notified everyone on whether or not they will be funded through this grant of the possibility of renewal. His concern is if they don't do this, they lose time and the employee. Marty suggested if the funding comes through the employee could be retained. Further discussion followed regarding the grant and the employee.

George stated the last issue is hospital invoices. Karen stated they have identified the ones the County is responsible for but what they did not receive were break downs. She stated there are inconsistencies with charges for services. Commissioner Driscoll suggested contacting Summit for a specialist. Klarryse stated she knows who to call for expertise on the issue. Karen stated there will be some negotiation with the hospital on back billing. George stated the County is supposed to be the payer of last resort in this billing and he questioned the processing of the bills through alternative sources. These bills are totaling over \$120,000. Commissioner Rokosch asked who authorized these services in the first place. His concern is if no authorization was obtained, then the County is not responsible for these bills. Commissioner Grandstaff stated there is a process to satisfy the auditors prior to authorizing any payment of these bills. Commissioner Driscoll offered to investigate the bills. George reviewed the process with the Board. George stated he would draft a letter to the hospital.

Commissioner Grandstaff stated they have found \$38,000 to cover the cut in the operating budget of the Sheriff's Office with mitigation fees and capital improvement line. Klarryse stated they do not want to do more than one request. She stated they want all the bills to come in and then request the money.

Commissioner Grandstaff reviewed Planning budget issues with staff transition. The bottom line is \$10,539. Klarryse reviewed the balance in GUC with the Board. Commissioner Grandstaff discussed funding future development projects and the receipt of \$23,000 from the City back payments on PILOT.

Commissioner Grandstaff discussed the Treasurer's Department shortage of \$5,000 and Juvenile Detention training for new officers totaling \$8,800.

Commissioner Grandstaff reviewed Justice Court #1 for Robin Clute and Justice Court #2 for Jim Bailey operating costs.

Robert Jenni discussed policy with retro pay for COLA with employees who terminate prior to the adoption of the budget. It was the Board's consensus to not pay retro to employees who terminate prior to budget adoption. Discussion of updating the employee policy manual followed.

Jana discussed the County Flex plan with the Board and a bill received for the annual administration fee. It was determined to pay the bill with GUC and wait for a balance with reimbursement from EBMS.